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BEFORE THE
SURFACE TRANSPORTATION BOARD

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DEC 18 2009

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Public Record

MILWAUKEE INDUSTRIAL TRADE)
CENTER, LLC, d.b.a. MILWAUKEE)
TERMINAL RAILWAY -- ACQUISITION)
AND OPERATION EXEMPTION -- LINE) FINANCE DOCKET
OWNED BY MILWAUKEE INDUSTRIAL) NO. 35133
TRADE CENTER, LLC, d.b.a.)
MILWAUKEE TERMINAL RAILWAY)

JOINT PETITION FOR REVOCATION OF EXEMPTION

MILWAUKEE INDUSTRIAL TRADE
CENTER, LLC
d.b.a. MILWAUKEE TERMINAL RAILWAY
4777 West Lincoln Ave.
West Milwaukee, WI 53219

Applicant

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DATE FILED: December 18, 2009

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JOINT PETITION FOR REVOCATION OF EXEMPTION

Pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. § 1121.4(f), Petitioner MILWAUKEE INDUSTRIAL TRADE CENTER d.b.a. MILWAUKEE TERMINAL RAILWAY (MITC), and Protestant REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE (RACM) hereby jointly petition for revocation of an exemption from 49 U.S.C. § 10901 for MITC's acquisition as common carrier track, and operation, of approximately two miles of track theretofore operated as private track, located within a plant site at Milwaukee, WI formerly owned by A.O. Smith Corp., later owned by Tower Automotive, Inc., and acquired by MITC. That exemption is contained in a Notice of Exemption served by the Board on May 1, 2008.

BACKGROUND

On April 14, 2008, as amended on April 16, 2008, MITC filed a Verified Notice of Exemption under 49 C.F.R. § 1150.31 for an exemption from 49 U.S.C. § 10901 for its acquisition as common carrier track, and operation, of approximately two miles of track theretofore operated as private track, located within approximately 84 acres of real estate at

Milwaukee, WI formerly owned by A.O. Smith Corp., later owned by Tower Automotive, Inc., and acquired by MITC.

That exemption became effective on May 16, 2008.

On September 18, 2008, RACM filed a Petition to Revoke that exemption. MITC replied, and both parties filed additional replies.

MITC and RACM are the only parties in the proceeding.

In a letter filed on November 21, 2008, MITC and RACM requested that the Board suspend its consideration of all pending petitions until MITC and RACM complete or terminate settlement negotiations then being conducted by them.

In a decision served December 17, 2008, the Board instituted a proceeding in regard to the Petition to Revoke, but held the proceeding in abeyance pending further order of the Board. The Board directed the parties to submit a joint status report to the Board by March 17, 2009.

MITC and RACM did not agree on a joint status report. Accordingly, they filed separate status reports. RACM's status report requested a return of the disputed issues to the Board's active docket.

However, in a letter to the Board dated October 1, 2009, MITC and RACM jointly notified the Board that they have entered into a Purchase and Sale Agreement whereby RACM would purchase from MITC the real property in which the trackage covered by the exemption is located. Accordingly, MITC and RACM jointly requested the Board to withhold issuance of any further decision in this proceeding until after closing of that Purchase and Sale Agreement scheduled for on or before December 15, 2009, or until the Board is notified by either MITC or RACM that such Agreement has been terminated.

On December 15, 2009, the Purchase and Sale Agreement was closed, as scheduled. As of that date, RACM owns the real estate in which the trackage covered by the exemption is located.

JUSTIFICATION FOR JOINT REQUEST FOR REVOCATION OF EXEMPTION

Attached to this Joint Petition is the Affidavit of Thomas F. McFarland, Attorney for MITC, attesting that MITC has not exercised the authority contained in the exemption issued by the Board in this proceeding; that is, MITC has not acquired the involved trackage as common carrier track, and has not operated that trackage as either common carrier track or private track. Accordingly, that trackage remains private track at present. Mr. McFarland's Affidavit also attests that MITC has no intent to acquire and operate that track as common carrier track at any time in the future.

The Settlement Agreement between MITC and RACM provides that MITC and RACM shall join in a request that the Board release jurisdiction over the involved real estate and track to the end that RACM be able to own that property free from Board regulation and control. Thus, RACM does not intend to acquire or operate the involved trackage as common carrier track.

MITC and RACM respectfully submit that revocation of the involved exemption is appropriate in the circumstance here set out. MITC and RACM are the only parties in the proceeding. Both parties strongly support revocation. The authority provided by the exemption has never been exercised by MITC. There is no intent by either party to exercise that authority in the future. Revocation thus will not have any adverse effect. On the contrary, revocation will further the private settlement reached by the parties.

Therefore, in accordance with 49 U.S.C. § 10502(d), Board action to undo this unexercised and unwanted exemption for acquisition and operation is necessary to carry out the rail policy of 49 U.S.C. § 10101, in particular subsection 7 thereof in favor of reducing regulatory barriers to exit from the rail industry, and subsection 2 thereof in favor of minimizing the need for federal regulatory control over the rail transportation system.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should revoke the exemption contained in the Notice served by the Board on May 1, 2008, and confirm that the Board does not have jurisdiction over the involved trackage, without costs to any party.

Respectfully submitted,

MILWAUKEE INDUSTRIAL TRADE
CENTER, LLC
d.b.a. MILWAUKEE TERMINAL RAILWAY
4777 West Lincoln Ave.
West Milwaukee, WI 53219

Applicant

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Washington, DC 20007
(202) 672-5367

Attorneys for Protestant

DATE FILED: December 18, 2009

AFFIDAVIT OF THOMAS F. McFARLAND

THOMAS F. McFARLAND, being duly sworn, states the following:

1. I am an attorney who regularly practices before the Surface Transportation Board (the Board).
2. I represented MILWAUKEE INDUSTRIAL TRADE CENTER, d.b.a. MILWAUKEE TERMINAL RAILWAY (MITC) before the Board in Finance Docket No. 35133 wherein in May, 2008, MITC obtained an exemption from 49 U.S.C. § 10901 to acquire and operate as common carrier track approximately two miles of track within an approximate 84-acre former plant site at Milwaukee, WI that theretofore had been operated as private track.
3. By virtue of my representation of MITC, I have direct knowledge that MITC has not exercised the authority provided by that exemption; that is, MITC acquired the involved trackage in November, 2006 as private track, and has not operated that trackage as either common carrier track or private track during the period it owned the involved trackage and the adjoining parcel. MITC has now sold the parcel with the track to RACM. Accordingly, that track remains private track at present.
4. MITC has no intention of re-acquiring or operating that track as common carrier track at any time in the future. Instead, MITC has sold the 84-acre site in which that track is located to REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE (RACM), along with the private track itself.

5. Neither does RACM intend to acquire or operate the involved track as common carrier track. On the contrary, in a Purchase and Sale Agreement with MITC, RACM has agreed to join MITC to request that Board to revoke the involved exemption so that RACM would be able to own the 84-acre site free from Board regulation and control.
6. MITC has never leased or entered into any operating agreement with a tenant or other third party to operate the trackage as common carrier track.



Thomas F. McFarland
THOMAS F. McFARLAND

SUBSCRIBED and SWORN to
before me this 14th day of
December, 2009.

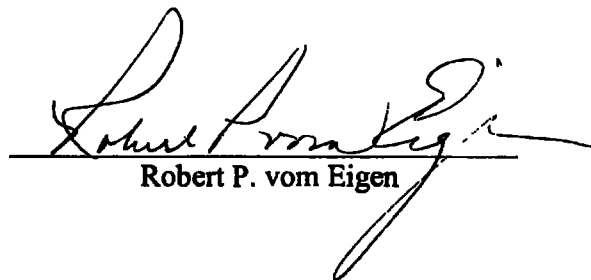
Kathleen Lenhan
Notary Public

My Commission expires: 1/29/2010

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Joint Petition for Revocation of Exemption on behalf of the Redevelopment Authority of The City of Milwaukee and the Milwaukee Industrial Trade Center, LLC to be served by e-mail and first class mail, postage pre-paid, this 18th day of December 2009, on

Thomas F. McFarland
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Robert P. vom Eigen